

## **Deposit In Lieu Of Surety Bond Under Texas Finance Code, Chapter 396**

THIS CONTRACT AND AGREEMENT, entered into in triplicate this \_\_\_\_\_, day of \_\_\_\_\_, A.D. 20\_\_\_\_, between \_\_\_\_\_, a(n) \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_ and doing business in the State of Texas (the "Registrant") and banking commissioner of Texas (the "Commissioner");

The Registrant is subject to Finance Code, Chapter 396 ("Chapter 396"), regulating private child support enforcement agencies, which is entitled the "Private Child Support Enforcement Agencies;" and

The Registrant is also subject to the rule administering Chapter 396, Title 7, Texas Administrative Code, Chapter 31 ("Chapter 31"), which is entitled "Private Child Support Enforcement Agencies;" and

Chapter 396 provides for a surety bond in the amount of \$50,000 or, at the option of the department, a deposit of money (the "Deposit") in an amount determined by the department not to exceed \$50, 000; and

In Chapter 31, the amount of the Deposit is set at \$50,000; and

The Commissioner may provide for custody of the Deposit by any insured depository in the state and the Commissioner hereby designates \_\_\_\_\_ as Custodian (the "Custodian"); and

The Commissioner has agreed to accept the Deposit and has agreed that \_\_\_\_\_, a \_\_\_\_\_ conducting business in \_\_\_\_\_, is qualified to act as Custodian:

The Registrant deposits \_\_\_\_\_ located in \_\_\_\_\_, \_\_\_\_\_ the following Deposit:

account number: \_\_\_\_\_ principal amount: \_\_\_\_\_

and it is agreed between the parties that:

1. Subject to the provisions of this agreement, the Deposit is deposited in favor of the state for the benefit of a person damaged by the Registrant's violation of the Chapter 396.

2. The Deposit may be exchanged from time to time for other Deposit of equal value that qualify under the provisions of the law relating to the Deposit, the substituted Deposit to be with joint written approval of the Commissioner, Registrant and Custodian.
3. All interest or dividends on the Deposit will be payable to or in accordance with the instructions of the Registrant, unless and until the Commissioner gives contrary notice to the Custodian in writing bearing the signature of the Commissioner or a Deputy Commissioner. The notice will be effective after Custodian has reasonable opportunity to act on it, such reasonable time being two business days after actual receipt of the notice.
4. The original principal amount of the Deposit under the terms of this agreement (plus interest accruing after the effective date of any notice given in accordance with paragraph 3 above) is under the exclusive control of the Commissioner or a Deputy Commissioner, who has the right from time to time to withdraw it. Any withdrawal request from the Commissioner must be in writing and supported by either: (1) a certified copy of an order of a court of competent jurisdiction or (2) an original or certified copy of a written order of the Commissioner containing the signature of the Commissioner. A withdrawal by the Commissioner under this section will satisfy any liability the Custodian has to the Commissioner and will relieve the Custodian of all liability to Registrant for such amounts.
5. If the Registrant faithfully conforms to and abides by the provisions of Chapter 396 and honestly and faithfully applies all funds received and performs all obligations and undertakings and pays to the state and to any person all money that becomes due and owing to the state or to such person under the provisions of the Chapter 396, then the Commissioner will have no further right in or claim to the Deposit covered by this agreement. When this happens and the Commissioner receives a written request from the Registrant, the Commissioner will, by written order containing the signature of the Commissioner or a Deputy Commissioner, notify the Custodian of the termination of the Commissioner's rights in the Deposit. Until the Custodian receives an original or a certified copy of such a written order from the Commissioner or an order from a court of competent jurisdiction terminating the Commissioner's rights in the Deposit, Custodian will be protected in assuming that this agreement remains in effect and that the rights of the Commissioner in the Deposit remain in existence.
6. Any and all orders of the Commissioner submitted to Custodian under this agreement will contain the signature of the Commissioner or a Deputy Commissioner. The current signatures of the Commissioners and Deputy Commissioners are:

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Banking Commissioner

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Deputy Commissioner

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Deputy Commissioner

Custodian may rely on notices or orders sent from the Commissioner that bear the signature of the Commissioner or a Deputy Commissioner. The Custodian is responsible to inquire into the authenticity and authority of all notices or orders purporting to bear the signature of the Commissioner or a Deputy Commissioner, but not bearing a signature shown in this section.

7. All notices or orders to Custodian may be delivered by certified mail, return receipt requested or by overnight or local delivery courier. Any notices or orders will be deemed to be received when actually received by the addressee. Notices and orders to the Custodian must be addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_

8. Nothing in this agreement requires Custodian to violate any applicable laws, any court order or the instructions of any bankruptcy trustee.
9. The Deposit is subject to Custodian's terms and conditions of deposit accounts now in existence and as they may be modified in the future, except to the extent that this agreement is specifically inconsistent therewith.
- 10. In no event will Custodian be liable for any indirect damages, lost profits, special punitive or consequential damages which arise out of or in connection with the obligations contemplated by this agreement. The provisions of this paragraph will survive termination of this agreement.**
- 11. Registrant agrees to pay, indemnify, defend and hold Custodian harmless from and against any and all liabilities, claims, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind whatsoever including, without limitation legal fees (collectively "Damages") with respect to performance of this agreement by Custodian or any of Custodian's directors, officers, agents or employees, unless the Damages arise from its or their own gross negligence or willful misconduct.**
12. This agreement is executed in triplicate originals, one to be kept by each of the parties hereto, and one to be kept by the Custodian.

SIGNED AND DELIVERED in triplicate originals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Registrant's Name: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

SIGNED in triplicate originals by the Banking Commissioner of Texas this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Banking Commissioner of Texas

\_\_\_\_\_, Custodian acknowledges receipt of the Deposit described in this agreement, and covenants and agrees that the Deposit will be held by it for the purposes and subject to the terms and conditions of this agreement, but reserves the right to resign as Custodian by giving 30 days written notice to the signers of the agreement at the addresses specified:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Banking Commissioner of Texas  
2601 North Lamar Blvd.  
Austin, Texas 78701

Registrant's Name and Address

Custodian will become bound by the terms of this agreement only after it receives an original counterpart fully executed by all parties.

SIGNED by Custodian in triplicate originals this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Custodian: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_